

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1858.—Ordered to be printed.

Mr. POLK submitted the following

REPORT.

The Committee on Claims have had the claim of Richard G. Dove under consideration, and beg leave to report :

That this claim has already been twice reported against by the Committee on Claims of the Senate. The petitioner seems to think that because the Third Auditor might, under the authority of law, have contracted to give him a larger compensation than, in point of fact he did contract to give him, therefore, the petitioner ought to receive compensation for his services as assistant messenger up to the maximum limit to which the law allowed the Third Auditor to go. The committee by no means accede to any such position. They think the compensation of assistant messenger was matter of contract between him and the Third Auditor, and that the rate of compensation was fixed in this case between them ; and that the petitioner has received the full amount of compensation so agreed upon between them, and that, too, without protest or objection at the time. For the period from the first of July to the 14th of October, 1839, the compensation which the Third Auditor was willing to pay, being less than the petitioner was willing to receive, the latter quit the service in which he had been engaged. At the last named date he re-entered it again at an increased rate of compensation which he was willing to take, and so continued in the service at rates of compensation which the Third Auditor was willing to allow and which he was willing to receive.

The committee adopt the report submitted on this claim on the 19th of April, 1848, by the Committee on Claims, through Mr. Underwood, as follows :

“ That Richard G. Dove, formerly assistant messenger in the office of Third Auditor of the Treasury, states that, while in service he did not receive so much as Congress annually appropriated to pay the assistant messenger. He claims the full amount of the appropriation, to wit : at the rate of \$400 per annum during his service, subject to a credit for the amount paid him. This claim is based upon the idea that the petitioner was an officer of the government with an annual

salary fixed by law. The committee do not admit the propriety of regarding messengers as salaried officers. The appropriation for clerks and messengers in the Third Auditor's office in the year 1830, being the first succeeding Mr. Dove's employment, was in these words: 'For compensation to the clerks and messengers in the office of the Third Auditor, twenty-one thousand nine hundred and fifty dollars.'

"In succeeding years the appropriation was in the same, or equivalent language. Under these appropriations the clerks were doubtless entitled to receive, respectively, the amount of compensation fixed by law for the grade to which they were severally appointed. But the committee have not been referred to any law which fixes the amount to be paid for the services of messengers and assistant messengers. Nor have they found any such law in their researches. If, then, there be no law directing and prescribing the amount to be paid to messengers and assistants, it follows that the department must contract for the service, and pay out of the appropriation such sums as are agreed on, not exceeding the amount appropriated. That, it is believed, has been done in the present case, and hence Mr. Dove can justly claim nothing more.

"The act approved 26th May, 1824, authorizing the employment of additional clerks and certain messengers and assistants, provides, that it shall be lawful for the officers of the departments to employ in their respective offices messengers, assistants, and other persons, as follows, (among others :) 'In the office of the Third Auditor one messenger and assistant, at a compensation together not exceeding one thousand and fifty dollars per annum.' This provision confirms the views already stated. The statute does not declare how much shall be paid to the messenger, and how much to the assistant. Nor does it say that both together shall receive the one thousand and fifty dollars. It may be less. It cannot be more. It is not to exceed that sum. But who shall decide whether it shall fall short? Evidently, the officers of the department who are vested with the authority to employ the messenger or assistant.

"The committee see no just foundation for the claim of the petitioner, and recommend that it be rejected."